

**Remarks**

Claims 1-33 are pending in the present application. By this amendment, new claims 32 and 33 are added to the application. Reconsideration of the pending claims is requested in view of the following remarks.

**I. Allowed Claims**

Applicant thanks the Examiner for indicating that claims 1-17 and 22-31 are allowed.

**II Rejection of Claims 17-19 and 21**

Claims 17-19 and 21 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious from U.S. Patent No. 3,171,409 to Cetrone (Cetrone). Applicant traverses this rejection and requests that it be withdrawn.

**Claim 17:**

Independent claim 17 is directed to a horse halter comprising an elongated poll strap for extending over a horse's poll. The poll strap comprises an outer sheath and a non-elastic cable enclosed in the outer sheath.

In contrast, Cetrone discloses an orthopedic belt 11 comprising elongated intermediate sections 14 and contoured pads 28 affixed to the intermediate sections 14. In the rejection of claim 17, the action contends that Cetrone's pads 28 are non-elastic cables. Applicant disagrees. Cetrone teaches forming the pads 28 from "thin leather, foam rubber or other elastomeric preferably foamed material." See col. 3, lines 24-26 of Cetrone (emphasis added).

The test for determining obviousness is whether the prior art suggests the desirability of making the claimed combination of features. MPEP § 2143.01; *Winner International Royalty Corp. v. Wang*, 202 F.3d 1340, 53 U.S.P.Q.2d 1580 (Fed. Cir. 2000). Cetrone does not provide any hint or suggestion as to why it would be desirable to form the pads 28 from a non-elastomeric material. Furthermore, Cetrone's emphasis on using elastomeric materials, and in particular, foamed materials, indicates that the use of hard or non-elastomeric materials in the Cetrone belt would be less desirable, and perhaps unsuited or inadequate to serve the intended purpose of the device.

For example, an objective of the Cetrone belt is to support the abdominal wall, spine and back muscles of the user, thereby reducing the likelihood of overstraining and impairing these

body parts. See col. 3, lines 35-42 of Cetrone. In contrast, as explained in the present application, a non-elastic cable (e.g., a steel cable) used in a horse halter is intended to increase the concentration of pressure on the horse's poll area (or other pressure point on the horse's head) and (temporarily) cause discomfort for the horse when tension is applied to the halter. See, e.g., page 12, lines 12-14 of the application. Because Cetrone is specifically intended to relieve discomfort and pain of the user, it teaches against the use of the materials recited in the subject claims.

For the foregoing reasons, claim 17 is not anticipated or rendered obvious by Cetrone and should be allowed.

Claims 18, 19 and 21:

Independent claim 18 is directed to a strap component for use in equestrian equipment comprising a flexible outer covering and a non-elastic cable enclosed in the outer covering. In contrast, Cetrone discloses an orthopedic belt 11 having elastomeric pressure pads. Cetrone fails to provide any teaching or suggestion regarding the use of a non-elastic cable, as recited in claim 18. Accordingly, claim 18 is not anticipated or rendered obvious by Cetrone and should be allowed.

Claims 19 and 21 depend from claim 18 and are allowable for the reasons given above in support of claim 18 and because each dependent claim sets forth an independently patentable combination of features.

For example, Cetrone neither teaches nor suggests a strap comprising a flexible outer covering and a flexible steel cable enclosed in the outer covering, as recited in claim 21. In the rejection of claim 21, the action contends that it would have been obvious to replace Cetrone's pads 28 with a flexible steel cable because these two materials are functional equivalents.

Applicant disagrees that these two materials are functional or mechanical equivalents.

A steel cable has physical properties that are much different than those of Cetrone's elastomeric pads 28 and functions in a much different way than Cetrone's pads 28 to provide a completely different result. For example, Cetrone's belt is intended to relieve pain and discomfort of a human user. The elastomeric pads 28 of the belt presumably are intended to be somewhat compliant to achieve such ends. In contrast, as discussed above, a steel cable used in a horse halter is intended to increase the concentration of pressure on the horse's poll area (or other pressure point on the horse's head) and (temporarily) cause discomfort for the horse when

tension is applied to the halter. Hence, not only are a steel cable and Cetrone's elastomeric pad not functional equivalents, a steel cable would appear to be unsuitable for use in the Cetrone belt.

Furthermore, in order to rely on equivalence as the basis for an obviousness rejection, the equivalency must be recognized in the prior art, even if the components at issue are functional or mechanical equivalents (although the components at issue in this case are not equivalents).

MPEP § 2144.06, citing *In re Scott*, 323 F.2d 1016, 139 U.S.P.Q. 297 (CCPA 1963) (reversing an obviousness rejection based on equivalent components; holding that the light wood or hardened foam resin core of the prior art does not fairly suggest the use of the claimed paper core). In the present case, as in the Scott case, there is no evidence that the prior recognizes that a steel cable is a functional equivalent of the thin leather or foam rubber pads 28 disclosed in Cetrone.

### **III. Rejection of Claim 20**

Claim 20 was rejected under 35 U.S.C. § 103(a) as allegedly being obvious from Cetrone in view of U.S. Patent No. 2,932,930 to Ray (Ray). Applicant traverses this rejection and requests that it be withdrawn.

Claim 20 depends from claim 18 and is allowable for the reasons given above in support of claim 18 and because claim 20 sets forth a respective combination of features that is independently patentable over Cetrone and Ray.

Claim 20 is directed to a poll strap of a halter comprising a flexible outer covering and a non-elastic cable enclosed in the outer covering. In the rejection of claim 20, the action contends that it would have been obvious to replace the strap of Ray with the strap of Cetrone to derive the subject claim because the two straps are functional equivalents. Applicant disagrees.

As discussed above, in order to rely on equivalence as the basis for an obviousness rejection, the equivalency must be recognized in the prior art (even if the components at issue are functional or mechanical equivalents). MPEP § 2144.06. Ray discloses a horse halter comprising a conventional leather poll strap. There is no evidence that the prior art recognizes that Cetrone's orthopedic belt is even an arguable functional equivalent of a conventional leather poll strap, such as disclosed in Ray. Moreover, a poll strap is intended to apply pressure to a horse's poll. Cetrone's orthopedic belt teaches against its combination with Ray because

Cetrone's preferred material for the pads 28, foam rubber, which is compliant, would decrease the pressure felt by a horse.

Furthermore, MPEP § 2141.01(a) states that nonanalogous prior art cannot be used in an obviousness rejection under 35 U.S.C. § 103(a). A reference must be analogous prior art, which requires the reference to be in the inventor's field of endeavor or the reference to be reasonably pertinent to the particular problem with which the inventor was concerned. MPEP § 2141.01(a). Because Cetrone does not satisfy the requirements of analogous prior art under MPEP § 2141.01(a), the rejection cannot be based on the combination of Cetrone and Ray.

As to the first prong of the analogous art test, Cetrone concerns an orthopedic belt used by humans, which is different than the field of horse-control devices. As to the second prong of the analogous art test, Cetrone's belt is intended to provide support to the abdominal wall, spine and back muscles of the user, thereby reducing the likelihood of overstraining and impairing these body parts. In contrast, an object of Applicant's device is to increase the concentration pressure on a horse's head so as to cause temporary discomfort for the horse. Cetrone does not address this or any other objectives that Applicant's device is intended to accomplish. For the foregoing reasons, Cetrone is nonanalogous prior art and therefore cannot be used as a basis for the rejection of claim 20.

## VI. New Claims

New claims 32 and 33 recite additional features that are neither taught nor suggested by Cetrone. For example, new claim 32 recites that the non-elastic cable has a substantially circular cross-sectional profile (as shown in FIG. 4 of the application). New claim 32 recites that the outer covering comprises at least one fabric strap, wherein the cable is not secured to the fabric strap.

**V. Conclusion**

The present application is in condition for allowance and such action is respectfully requested. If any further issues remain concerning this application, the Examiner is invited to call the undersigned to discuss such matters.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By

  
\_\_\_\_\_  
Jeffrey B. Haendler  
Registration No. 43,652

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 228-9446